(16,513.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 321.

OSCAR R. LOOKER, CHARLES A. KENT, WILLIAM S. GREEN, ET AL., PLAINTIFFS IN ERROR,

vs.

FRED. A. MAYNARD, ATTORNEY GENERAL OF THE STATE OF MICHIGAN, ON THE RELATION OF JOSEPH W. DUSENBURY AND WILL J. DUSENBURY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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1 STATE OF MICHIGAN:

Supreme Court.

ATTORNEY GENERAL *ex Rel.* JOSEPH W. DUSENBURY and WILL J. DUSENBURY

vs.

OSCAR R. LOOKER, CHARLES A. KENT, WILLIAM S. GREEN, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney, Michael J. Mooney, Respondents.

Information.

STATE OF MICHIGAN:

Supreme Court.

And now comes Fred A. Maynard, attorney general, who prosecutes for and on behalf of the people of the State of Mich-
2 igan, and on the relation of Joseph W. Dusenbury and Will J. Dusenbury, both residents of the city of Columbus, in the State of Ohio, gives the court to understand and be informed that the Michigan Mutual Life Insurance Company is a corporation located at the city of Detroit in this State, and organized July 3rd, 1870, and now existing under an act entitled, "An act in relation to life insurance companies transacting business within this State," approved March 30th, 1869; that the articles of association of said corporation, as approved by the attorney general of the State and filed in the office of the secretary of State, contains the following as

Article IV.

"The corporate powers of the company shall be exercised by a board of directors which shall consist of twenty-one members, which may be increased at the option of the board to not more than forty.

The first meeting for the election of directors shall be called by the present officers and held as soon as practicable after these articles shall take effect.

No person shall be eligible who is not owner of at least ten shares of the guarantee capital of the company, and at least two-thirds of the directors shall be residents of the State of Michigan. The board, at their first meeting, shall divide themselves by lot into three equal classes, as near as may be, whose terms of office shall expire at the end of one, two and three years respectively, and thereafter one-third of the directors shall be chosen annually for the class whose term then expires, who shall hold office for three years, or until their successors are elected; but the first board of directors, whose terms shall not have expired previous to the last Tuesday in January, shall continue in office until the last Tuesday in January following. The election of directors shall be had at the

annual meeting of the company which shall be held on the
3 last Tuesday in January at the office of the company in Detroit. They shall be chosen by ballot and a majority of all the votes cast shall elect. Every shareholder shall be entitled to one vote for directors for every share of guarantee capital standing in his name on the books of the company and may vote in person or by proxy. And every policy-holder insured in this company for the period of his natural life in the sum of not less than five thousand dollars shall also be entitled to one vote in the annual election of directors, which vote must be given in person.

Vacancies occurring in the board of directors in the intervals of elections shall be filled by the board, and if the board at any time adds to the number of directors it shall elect the new members to hold office until the next annual meeting when such additional members shall be chosen by the company and classified as to term of office in the same manner as directors are classified at the first meeting. Provided, however, the board shall not have the power to increase the number and elect such new directors unless a majority of all the directors be present. Seven directors shall constitute a quorum for the transaction of business. At the first meeting after reorganization and at their first meeting after the annual election in each year they shall elect from their number a president and vice-president to hold office for the ensuing year, and they may also appoint a secretary, an actuary, and such other officers and agents as the by-laws may provide for, whose appointments shall be during the pleasure of the board.

Directors shall not be eligible to the office of actuary."

And the said attorney general, on the relation aforesaid, gives the court further to understand and be informed that afterwards, to wit: on the 26th day of January, 1875, the board of directors of said company increased the number of the directors to thirty;
4 that afterwards, to wit: on the 30th day of October, 1894, the board took action providing for a gradual reduction of the board from thirty to twenty-one, and that during the year 1895 the board of directors of said corporation consisted of the following-named stockholders: Hoyt Post, Robert W. King, Martin S. Smith, Dexter M. Ferry, Edward H. Elwell, Richard P. Williams, William H. Brace, Albert H. Wilkinson, John H. Kaple, Thomas A. Wadsworth, Charles A. Devendorf, James H. Cummins, George Peck, Charles F. Marskey, Charles A. Kent, William A. Moore, William C. Colburn, William S. Green, Louis H. Chamberlain, Benjamin J. Conrad, Michael J. Mooney, Oscar R. Looker and your relator, Joseph W. Dusenbury, making a total membership of twenty-three persons; that the last nine of said board for 1895, as above named, were elected directors at the annual meeting of the stockholders on the last Tuesday of January, 1893; that the first seven of said board for 1895, as above named, were elected directors at the annual meeting in January, 1894, and the second seven were elected at the annual meeting in January, 1895; that the regular annual meeting of the stockholders of said company was held on Tuesday, the 28th day of January, 1896, and relator Joseph W. Dusenbury attended

and was present at said meeting as a stockholder, and he also held a proxy from each of the following stockholders, viz: Will J. Dusenbury, 246 shares; Theodore P. Gordon, 184 shares; and Charles S. Cherington, 20 shares, making with his own shares, a total of 1,238 shares, on which said Joseph W. Dusenbury was entitled to vote at said meeting; that the total number of shares represented was 4,893, out of a total number of 5,000; that Charles A. Kent was elected chairman of said meeting, and James H. Cummins acted as secretary; that among other business transacted at said meeting was the election of directors; that relator Joseph W. Dusenbury requested said meeting to elect directors in pursuance of the act approved May 21, 1885, entitled "An act to secure the minority of stockholders in corporations organized under general laws, the power of electing a representative membership in boards of directors;" that said meeting ignored the requirements of said act, and of the general law under which said company is incorporated; that all the directors for 1896, should be elected at said meeting, and first adopted a motion to proceed to the election by ballot of nine persons as directors to succeed the nine persons, naming them, last above named; and thereupon, all the stockholders present except relator Joseph W. Dusenbury, voted for directors with a ballot prepared for the occasion, as follows:

"For directors: O. R. Looker, C. A. Kent, W. S. Green, W. A. Moore, B. J. Conrad, W. C. Colburn, L. H. Chamberlain, M. J. Mooney, J. J. Mooney."

And the said attorney general on the relation aforesaid gives the court to further understand and be informed that each of said stockholders present, except relator Joseph W. Dusenbury, voted all his shares and all proxies held by them, for each of said nine persons, making the total vote cast for each of them 3,655; that relator Joseph W. Dusenbury multiplied the 1,238 shares held and represented by him by nine, making the total number of his votes 11,142, and dividing that equally, he cast 5,571 votes for Will J. Dusenbury, and 5,571 votes for Joseph W. Dusenbury; that the inspectors appointed to take and count the ballots refused to credit Will J. Dusenbury and Joseph W. Dusenbury with the votes cast by relator for them, and made a report to the meeting in the words and figures following, which was received and adopted by the meeting with full knowledge of all the facts.

Report of Inspectors.

"At the annual meeting of the stockholders of the Michigan Mutual Life Insurance Company, of Detroit, Michigan, held at the office of said company on January 28th, 1896, between the hours of two and three o'clock p. m. city time—agreeable to the following notice, published according to the charter of said company, in two of the daily papers of Detroit.

"'The annual meeting of the stockholders of the Michigan Mutual Life Insurance Company, of Detroit, Michigan, will be held at the home office of the company on Tuesday, January 28th, 1896, for

the election of directors. The polls will be open from two to three o'clock p. m. city time. The meeting of the directors of said company will be held on the same date, at three o'clock p. m. city time, for the election of officers, and the transaction of such other business as may legally come before the board. Books will be closed for the transferring of stock on January 23rd, 1896, until after the annual meeting.

JAMES H. CUMMINS, *Secretary.*'

"The following number of shares of stock were voted: 4,893; and we, the undersigned inspectors of election, appointed by the chairman of said stockholders' meeting, do hereby certify to C. A. Kent, chairman, and James H. Cummins, secretary, of said meeting of shareholders, that the following persons received the number of votes set opposite their respective names for directors of said company, to serve for three years, according to the provisions of the charter of said company.

O. R. Looker	3,655	B. J. Conrad	3,655
C. A. Kent	3,655	M. J. Mooney	3,655
W. S. Green	3,655	L. H. Chamberlain	3,655
W. A. Moore	3,655	W. C. Colburn	3,655
J. J. Mooney	3,655	W. J. Dusenbury	1,238
J. W. Dusenbury	1,238		

A. H. WILKINSON,
B. J. CONRAD,
CHAS. F. MARSKEY,
Inspectors."

7 And the said attorney general on the relation aforesaid gives the court to further understand, and be informed that in and by virtue of the votes so cast for the said Joseph W. Dusenbury and Will J. Dusenbury, they were duly elected members of the board of directors of said company, yet, notwithstanding their said election, the said Oscar R. Looker, Charles A. Kent, William S. Green, William A. Moore, John J. Mooney, Benjamin J. Conrad, Michael J. Mooney, Louis H. Chamberlain and William C. Colburn, have unlawfully intruded into and ursurped the offices of members of the board of directors of said corporation, and have unlawfully excluded the said Joseph W. Dusenbury and Will J. Dusenbury therefrom, and for the space of six months and upwards now last past they have held, used and exercised and still do use, hold and exercise without any legal election, appointment, warrant or authority whatsoever, the offices of members of the board of directors of the said The Michigan Mutual Life Insurance Company, a corporation created by authority of this State.

Wherefore, the said attorney general on the relation aforesaid, prays the advice of the court in the premises, and for due process of law against the said Oscar R. Looker, Charles A. Kent, William S. Green, William A. Moore, Lewis H. Chamberlain, William C. Colburn, all of Detroit, in the county of Wayne, in this State, Benjamin J. Conrad, of Ann Arbor, in the county of Washtenaw

in this State, and John J. Mooney and Michael J. Mooney, of St. Mary's, in the State of Ohio, in this behalf to be made, to answer the said people by what warrant they claim to hold, use, exercise and enjoy the said offices of members of the board of directors of the said The Michigan Mutual Life Insurance Company; and the said attorney general on the relation aforesaid, also prays the judgment of the court upon the right of the said Joseph W. Dusenbury and Will J. Dusenbury to hold the offices of members of said board of directors.

FRED A. MAYNARD,
Attorney General.

FRED A. BAKER,
Counsel for Relators.

Endorsed: Filed August 1, 1896. Chas. C. Hopkins, clerk supreme court.

8 *Summons.*

The supreme court of the State of Michigan to the sheriff of the county of Wayne, Greeting:

In the name of the people of the State of Michigan we command you to summons Oscar R. Looker, Charles A. Kent, William S. Green, William A. Moore, John J. Mooney, Benjamin J. Conrad, Michael J. Mooney, Louis H. Chamberlain, and William C. Colburn to be and appear in the supreme court of the State of Michigan, before the justices thereof, at the supreme court room, in the capitol, in the city of Lansing, on the twenty-second day of August, 1896, to answer a certain information filed therein by Hon. Fred A. Maynard, attorney general of the State of Michigan, in behalf of the people of said State, against said Oscar R. Looker, Charles A. Kent, William S. Green, William A. Moore, John J. Mooney, Benjamin J. Conrad, Michael J. Mooney, Louis H. Chamberlain, and William C. Colburn for usurping upon the said people certain liberties, privileges, and franchises therein specified; and have you then there this writ.

Seal Supreme Court Michigan.

Witness the Honorable Charles D. Long, chief justice of our supreme court, at Lansing, this first day of August, in the year of our Lord one thousand eight hundred and ninety-six.

CHAS. C. HOPKINS,
Clerk of the Supreme Court.

STATE OF MICHIGAN, } ss:
County of Washtenaw, }

9 I hereby certify and return that on the eighth day of August, A. D. 1896, at the city of Ann Arbor, in said county, I served the within summons personally on Benjamin J. Conrad, defendant named in said summons, by then and there, at the place and on the date above mentioned, delivering to said above-named

defendant a true copy of the said summons, inscribed "copy" and subscribed — Hon. Fred A. Maynard, complainant's solicitor, and by showing at the same time to the said above-named defendant the said summons, with the seal of the court impressed thereon; *on* which copy so served was a true copy of the underwriting on the said summons.

WM. JUDSON, *Sheriff*,
By LESTER CANFIELD,
Dept. Sheriff.

Dated August 8, A. D. 1896.

My fees, $1.20.

STATE OF MICHIGAN, } ss:
County of Wayne, }

I hereby certify and return that on the 5th day of August, A. D. 1896, at Detroit, in said county, I served the within summons personally on Oscar R. Looker, William A. Moore, Louis H. Chamberlain, and William C. Colburn, and on the 6th day of August, at the city of Detroit, I served William S. Green, five of the defendants named in said summons, by then and there, at the place and on the dates above mentioned, showing to said above-named defendants the within summons, with the seal impressed thereon, and delivering to said defendants a true copy of said summons.

My fees, $5.00.

CHARLES P. COLLINS,
Sheriff of said County,
By JOHN HORN, JR.,
Dept. Sheriff.

10 STATE OF MICHIGAN, } ss:
County of Wayne, }

I do hereby certify and return that after diligent search and inquiry I have been unable to find the within-named defendants, Charles A. Kent, John J. Mooney, Benjamin J. Conrad, and Michael J. Mooney, in my bailiwick.

Detroit, August 24, 1896.

CHAS. P. COLLINS, *Sheriff.*
L. W. HIMES, *Deputy Sheriff.*

Endorsed: Filed Oct. 1, 1896. Chas. C. Hopkins, clerk.

11 STATE OF MICHIGAN:

Supreme Court.

THE ATTORNEY GENERAL *ex Rel.* JOSEPH W. DUSENBURY, WILL J. DUSENBURY,
vs.
OSCAR R. LOOKER, CHARLES A. KENT, WILLIAM S. GREEN, William A. Moore, John W. Mooney, Benjamin J. Conrad, Michael J. Mooney, Louis H. Chamberlain, William S. Colburn, Defendants.

On filing return of the summons in this cause showing that said summons was duly served on the defendants Oscar R. Looker, William A. Moore, Louis H. Chamberlain, William C. Colburn, William S. Green, and Benjamin J. Conrad, and more than twenty days since the return day of said summons having elapsed and no appearance having been entered by said defendants or either of them, on motion of F. A. Baker, counsel for relators, it is ordered that judgment by default be, and the same is hereby, entered against said defendants and each of them.

FRED A. BAKER,
Counsel for Relators.

Oct. 1, 1896.

12 STATE OF MICHIGAN:

Supreme Court.

THE ATTORNEY GENERAL *ex Rel.* JOSEPH W. DUSENBURY, WILL J. DUSENBURY, Relators,
vs.
OSCAR R. LOOKER, CHARLES A. KENT, WILLIAM S. GREEN, William A. Moore, John W. Mooney, Benjamin J. Conrad, Michael J. Mooney, Louis H. Chamberlain, William C. Colburn, Respondents.

The following order was entered in the common rule book in the above-entitled cause on October 1, 1896:

On filing return of the summons in this cause, showing that said summons was duly served on the defendants Oscar R. Looker, William A. Moore, Louis H. Chamberlain, William C. Colburn, William S. Green, and Benjamin J. Conrad, and more than twenty days since the return day of said summons having elapsed and no appearance having been entered by said defendants or either of them, on motion of F. A. Baker, counsel for relators, it is ordered that the judgment by default be, and the same is hereby, entered against said defendants and each of them.

13 *Præcipe.*

STATE OF MICHIGAN:

Supreme Court.

ATTORNEY GENERAL *ex Rel.* JOSEPH W. DUSENBURY, WILL J. DUSENBURY,
vs.
OSCAR R. LOOKER, CHARLES A. KENT, WILLIAM S. GREEN, William A. Moore, John J. Mooney, Benjamin J. Conrad, Michael J. Mooney, Louis H. Chamberlain, William C. Colburn, Defendants.

To the clerk of the supreme court:

The summons issued in this cause having been returned without service on the defendants Charles A. Kent, John J. Mooney, and Michael J. Mooney, you will please issue an alias summons against said last-named defendants. You will please direct said alias summons to the sheriff of the county of Wayne, and make it returnable at an early date.

FRED A. BAKER,
Att'y for Relators.

Detroit, Oct. 6, 1896.

Endorsed: Filed Oct. 6, 1896. Chas. C. Hopkins, clerk supreme court.

14 (*Alias Summons.*)

The supreme court of the State of Michigan to the sheriff of the county of Wayne, Greeting:

In the name of the people of the State of Michigan we command you, as you have been heretofore commanded, to summon Charles A. Kent, John J. Mooney, and Michael J. Mooney, impleaded with Oscar R. Looker, William S. Green, William A. Moore, Benjamin J. Conrad, Louis H. Chamberlain, and William C. Colburn, to be and appear in the supreme court of the State of Michigan, before the justices thereof, at the supreme court room, in the capitol, in the city of Lansing, on the twenty-seventh day of October, 1896, to answer a certain information filed therein by Fred A. Maynard, attorney general of the State of Michigan, in behalf of the people of said State, against said Charles A. Kent, John J. Mooney, Michael J. Mooney, Oscar R. Looker, William S. Green, William A. Moore, Benjamin J. Conrad, Louis H. Chamberlain, and William C. Colburn, for usurping upon the said people certain liberties, privileges, and franchises therein specified; and have you then there this writ.

Seal Supreme Court, Michigan.

Witness the Honorable Charles D. Long, chief justice of our su-

preme court, at Lansing, this 6th day of October, in the year of Lord one thousand eight hundred and ninety-six.

CHAS. C. HOPKINS,
Clerk of the Supreme Court.

STATE OF MICHIGAN, } ss:
County of Wayne, }

15 I hereby certify and return that on the thirteenth day of October, A. D. 1896, at the city of Detroit, in said county, I served the within summons personally on Charles A. Kent, one of the defendants named in said summons, by then and there, at the place and on the date above mentioned, showing to said above-named defendant the within summons, with the seal impressed thereon, and delivering to said defendant a true copy of said summons.

My fees, $1.00.

CHAS. P. COLLINS,
Sheriff of said County,
By LOUIS W. HIMES,
Deputy Sheriff.

Endorsed: Filed November 17, 1896. Chas. C. Hopkins, clerk.

16 STATE OF MICHIGAN:

Supreme Court.

ATTORNEY GENERAL *ex Rel.* JOSEPH W. DUSENBURY and WILL J. DUSENBURY
vs.
CHARLES A. KENT, JOHN J. MOONEY, MICHAEL J. MOONEY, Oscar R. Looker, William S. Green, William A. Moore, Benjamin J. Conrad, Louis H. Chamberlain, William C. Colburn, Defendants.

The alias summons issued in this cause having been returned duly served on the respondent Charles A. Kent and more than twenty days since the return day of said summons having elapsed and the said defendant, Charles A. Kent, having failed to enter his appearance in this cause, on motion of Fred A. Baker, attorney for relators, it is ordered that the default of said Charles A. Kent and judgment thereon be, and the same are hereby, entered according to the rules and practice of this court.

To the clerk of the supreme court:

Please enter the above and foregoing order in the rule book and oblige,

Your ob't serv't,

FRED A. BAKER,
Attorney for Relators.

Dated Nov. 17, 1896.

Endorsed: Filed Nov. 17, 1896. Chas. C. Hopkins, clerk supreme court.

17 STATE OF MICHIGAN:

Supreme Court.

ATTORNEY GENERAL *ex Rel.* JOSEPH W. DUSENBURY and WILL. J. DUSENBURY
vs.
OSCAR R. LOOKER, CHARLES A. KENT, JOHN J. MOONEY, MICHAEL J. Mooney, William S. Green, William A. Moore, Benjamin J. Conrad, Louis H. Chamberlain, and William C. Colburn, Respondents.

The following order was entered in the common rule book in the above-entitled cause on November 17, 1896:

The alias summons issued in this cause having been returned duly served on the said respondent, Charles A. Kent, and more than twenty days since the return day of said summons having elapsed and the respondent Charles A. Kent having failed to enter his appearance in this cause, on motion of F. A. Baker, attorney for relators, it is ordered that the default of said Charles A. Kent and judgment thereon be, and the same are hereby, entered according to the rules and practice of this court.

18 At a session of the supreme court of the State of Michigan held at the supreme court room, in the capitol, in the city of Lansing, on the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Charles D. Long, chief justice; Claudius B. Grant, Robert M. Montgomery, Frank A. Hooker, Joseph B. Moore, associate justices.

THE ATTORNEY GENERAL *ex Rel.* JOSEPH W. DUSENBURY and WILL J. DUSENBURY, Relators,
vs.
OSCAR R. LOOKER, CHARLES A. KENT, WILLIAM S. Green, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney, Respondents. # 14729.

On motion of C. A. Kent, attorney for respondents Looker, Kent, Green, Moore, Chamberlain, Colburn, and Conrad, and after hearing counsel for relators, it is ordered that the default of said respondents be set aside on condition that they plead or demur to the information within ten days, and if an issue of fact arises go to an immediate trial in the Wayne circuit and submit the case to this court during the first week of the ensuing January term.

19 *Answer and Demurrer.*

STATE OF MICHIGAN:

In the Supreme Court.

In the Matter of the Information of FRED A. MAYNARD, Attorney General, on Behalf of the People of the State of Michigan, on the Relation of Joseph W. Dusenbury and Will J. Dusenbury,
against
OSCAR R. LOOKER, CHARLES A. KENT, WILLIAM S. GREEN, William A. Moore, LOUIS H. Chamberlain, and William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney.

The Answer of Respondents Above Named.

1. These respondents admit that the Michigan Mutual Life Insurance Company was organized under the act named, being chapter 131 of Howell's Annotated Statutes, and that article 4 of the articles of association is as stated.

2. They admit the increase of the number of directors to thirty, and the subsequent decrease as stated. They also admit that in 1893 the directors were as stated.

3. They also admit the statements of the information as to the election of 1896, save that they aver that said relator, Joseph W. Dusenbury, never claimed that the whole board of directors should then be elected. He claimed only that he had a right to cumulate his votes and multiply the whole number of his shares by nine, and divide his votes between himself and said Will J. Dusenbury.

4. They say that article 4 of the articles of association of said company was adopted under and in accordance with paragraph 4 of section 4217 of Howell's Annotated Statutes, which in providing the contents of the articles of association, reads thus: "The manner in which the corporate powers are to be exercised, the number of directors and other officers, the manner of electing the same, and how many of the directors shall constitute a quorum, and the manner of filling vacancies." And paragraph 7 of the same article provides: "Any terms and conditions of membership therein which the corporators may have agreed upon, and which they may deem important to have set forth in such articles."

The articles of association prepared in accordance with said section 4217, was submitted to the then attorney general of the State, and approved by him, as provided in section 4220 of Howell.

20 5. These respondents say that said articles of association constituted a contract between the members thus associating together and their successors, which contract is protected by the Constitution of the United States, and by the constitution of the State of Michigan, and especially by the provisions of said constitutions, which forbid the passage of laws impairing the obligations of contracts.

6. These respondents say that said Joseph W. Dusenbury has been a stockholder of said life insurance company from Nov. 15th, 1890; that he was elected a director January 27th, 1891; that from that time until Jan. 28th, 1896, he has been such director; that in Jan. 1893, he was elected second vice-president of the company, and as such, has had a large share in the financial management of the company until his resignation in December, 1894. Said Joseph W. Dusenbury has attended every meeting of the stockholders of said insurance company from and including Jan. 26th, 1892, to Jan. 28th, 1896, and never until the last date has objected to the method of electing directors, provided by the articles of association. From the origin of the company until the present time, as shown by the record of the company, directors have been elected in the manner provided by said article 4 of the articles of association.

7. These respondents further say, that said relators have not applied to be recognized as directors of said Michigan Mutual Life Insurance Company, and that if there has been any exclusion of them from said office, it was done by the stockholders' meeting, as stated in said information; that these respondents have neither individually or jointly taken any action with reference to the claims of respondents; that respondents Moore, Colburn, John J. Mooney and Michael J. Mooney, have never attended any meeting of the board of directors since said 28th of January, 1896, or in any way acted as directors of said company since said last-mentioned date; that the directorship is not a place of profit to the holder.

21 8. Respondents further show, that said information does not set forth any facts which justify the relief sought, and they ask the same advantage as though they had demurred on this account. They ask that it be dismissed with costs.

OSCAR R. LOOKER,
CHARLES A. KENT,
WILLIAM S. GREEN,
WILLIAM A. MOORE,
LOUIS H. CHAMBERLAIN,
WILLIAM C. COLBURN,
BENJAMIN J. CONRAD,
JOHN J. MOONEY,
MICHAEL J. MOONEY,
By C. A. KENT, *Their Attorney.*

C. A. KENT,
Of Counsel for Respondents.

Endorsed: Filed November 30, 1896. Chas. C. Hopkins, clerk supreme court.

22 *Joinder in Demurrer.*

And the said attorney general, as to the demurrer of the said respondents, saith, that the said information filed by the said attorney general for and on the behalf of the people of the State of Michigan, against said respondents, is sufficient in law.

Wherefore, the said attorney general, for want of a sufficient plea in this behalf, prays for a judgment of ouster against said respondents, and in favor of the right of said relators, with costs.

FRED A. MAYNARD,
Attorney General.

FRED A. BAKER,
Attorney for Relators.

Endorsed: Filed December 5, 1896. Chas. C. Hopkins, clerk supreme court.

23 At a session of the supreme court of the State of Michigan held at the supreme court room, in the capitol, in the city of Lansing, on the eighth day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable Charles D. Long, chief justice; Claudius B. Grant, Robert M. Montgomery, Frank A. Hooker, Joseph B. Moore, associate justices.

ATT'Y GEN'L *ex Rel.* JOSEPH W. DUSENBURY *et al.*, Relators,
vs.
OSCAR R. LOOKER *et al.*, Respondents. } #14729.

This cause, coming on to be heard, is duly submitted upon briefs.

24 *Opinion.*

Supreme Court.

ATTORNEY GENERAL *ex Rel.* JOSEPH W. DUSENBURY and WILL J. DUSENBURY
vs.
OSCAR R. LOOKER, CHARLES A. KENT, WILLIAM S. Green, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney, Respondents. } *Quo Warranto.*

This is a proceeding brought to test the validity of the minority of stockholders' law.

The Michigan Mutual Life Insurance Company was organized July 3, 1870, under a general law for the incorporation of life insurance companies, approved March 30, 1869.

How. Ann. Stat., p. 1072.

Section 1 of that act provides, among other things, "that any number of persons, not less than thirteen, may associate together and form an incorporated company for the purpose of making insurance upon the lives of individuals, and every insurance pertaining thereto, and to grant, purchase and dispose of annuities."

The next section is in part as follows:

25 "SECTION 2. The persons so associating shall subscribe articles of association, which shall contain" * * * "the

manner in which the corporate powers are to be exercised; the number of directors and other officers and the manner of electing the same, and how many directors shall constitute a quorum, and the manner of filling all vacancies;" * * * "any terms and conditions of membership therein which the corporators may have agreed upon, and which they may deem important to have set forth in such articles."

The articles of association of the Michigan Mutual Life Insurance Company contain the following:

"The corporate powers of the company shall be exercised by a board of directors, which shall consist of twenty-one members, which may be increased, at the option of the board, to not more than forty.

"The first meeting for the election of directors shall be called by the present officers and held as soon as practicable after these articles shall take effect.

"No person shall be eligible who is not owner of at least ten shares of the guarantee capital of the company, and at least two-thirds of the directors shall be residents of the State of Michigan. The board at their first meeting shall divide themselves by lot into three equal classes, as near as may be, whose terms of office shall expire at the end of one, two, and three years respectively, and thereafter one-third of the directors shall be chosen annually for the class whose term then expires, who shall hold office for three years or until their successors are elected. They shall be chosen by ballot, and a majority of all the votes cast shall elect. Every shareholder shall be entitled to one vote for directors for every
26 share of guarantee capital standing in his name on the books of the company and may vote in person or by proxy, and every policy-holder insured in this company for the period of his natural life in the sum of not less than five thousand dollars shall also be entitled to one vote in the annual election of directors, which vote must be given in person." * * *

From the origin of the company the directors have been elected according to the provisions of said articles. Relator Joseph W. Dusenbury has been a stockholder from November 15th, 1890, and a director from January 20th, 1891. He has attended every meeting of the stockholders from and including January 26th, 1892, to January 28, 1896. Until the last-named date he has never objected to the election of directors in the manner prescribed by the articles. The terms of nine directors expired in 1896 and notice was given of an election to fill their places. On January 28, 1896, at the stockholders' meeting, relator J. W. Dusenbury claimed the right to vote his stock and that for which he held proxies, according to the minority representation law. He did not claim that more than nine directors should be then elected. He multiplied the number of shares for which he voted by nine, and voted half of this amount for himself and half for his brother, William J. Dusenbury. The stockholders rejected relator's claim and followed the articles of association, in accordance with which nine directors, who received all the votes save those of relator Joseph W. Dusenbury, were declared

elected. Respondents received each three thousand six hundred and fifty-five votes. Relators, through their multiplication, claim to have received each five thousand five hundred and seventy-one votes.

In 1885 an act was passed which reads: "An act to secure the minority of stockholders in corporations organized under general laws the power of electing a representative membership in boards of directors.

27 "SECTION 1. The people of the State of Michigan enact, That in all elections for directors of any corporation, organized under any general law of this State, other than municipal, every stockholder shall have the right to vote in person, or by proxy, the number of shares of stock owned by him for as many persons as there may be directors to be elected; or to cumulate said shares, and give one candidate as many votes as will equal the number of directors multiplied by the number of shares of his stock; or to distribute them on the same principle among as many candidates as he shall think fit. All such corporations shall elect their directors annually, and the entire number of directors shall be balloted for at one and the same time, and not separately." How. Ann. Stat., sec. 4885 A.

The constitution of Michigan adopted in 1850 contains the following: "Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered, or repealed."

It is the claim of the respondents that the power of the majority to elect all the directors and so fully control the corporation is a vested and valuable right of property reserved by the Constitution of the United States against the interference of State legislatures or constitutional conventions. Citing in support of this proposition—

Hayes *v.* Commonwealth, 82 Pa. St., 518.
Baker's Appeal, 109 Pa. St., 461.
State *v.* Greis, 78 Mo., 188.
Smith *v.* Atchinson R. R. Co., 64 F., 272.

In Hayes *v.* Com., *supra*, it is true, language of the following tenor was used: "If it be not a vested right in those who own a major part of the stock of a corporation to elect, if they see proper, every member of the board of directors, then I would like to know what a vested right means. This was part of the contract under which they entered into the company and for which they paid their money," and cites in support of that proposition the leading case of The Trustees of Dartmouth College, 4 Wheat., 518.

28 It is very generally agreed that the Dartmouth College case would not now apply to a case where the law conferring corporate authority reserved the right to alter, amend, or repeal.

The doctrine of the right of the majority of the stockholders to elect the directors, being a vested right, was not the point upon which the case of Haynes *v.* Com., *supra*, was decided. In that case it was held that the constitutional provision reading, "In all elec-

tions for directors or managers of a corporation each member or shareholder may cast the whole number of his votes for one candidate or distribute them upon two or more candidates, as he may prefer," did not apply to a corporation in existence at the time the constitutional provision was adopted, and the court says: "It is manifest that the convention did not intend to subject any private corporation to any of the provisions of the constitution which might in any degree change the charter thereof. If otherwise, why say in 2nd sec., 16th article, 'The General Assembly shall not remit the forfeiture of a charter of any corporation now existing, or alter or amend the same, or pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution'? This section is so comprehensive and clear that nothing is left for surmise or doubt.

Charters of private corporations are left exactly as the new constitution found them, and so they must remain until the companies holding them shall enter into a new contract with the State by accepting the benefit of some future legislation.

It is only on the theory that the manner of voting is not material that the cumulative system is sought to be saddled on this corporation, but if this company does not hold its charter subject to
29 the provisions of the present constitution, how can it be made subject to any one of such provisions, material or immaterial? It might apply to a legislative enactment attempting to alter this charter, but it cannot apply to this case, arising, as it does, directly on the constitution itself, for it is excluded by the very terms of that instrument."

The case of Baker's appeal was a proceeding to determine whether the American Academy of Music was brought within the provisions of the constitution providing for cumulative voting by accepting its provisions in the manner indicated by law. It was held: "If at a meeting duly called for that purpose a majority, not in number but in interest, of the stockholders present thereat in person or by proxy authorizes such acceptance, then and not till then can the holders of the major part of the capital stock be stripped of their vested right to elect a full board of directors all of their own selection," the court accepting the view expressed in Hayes *v.* Com., that the constitutional provision permitting cumulative voting was not intended to and did not apply to corporations in existence unless accepted by them.

In the case of State *ex rel.* Haeusler *v.* Green, 78 Mo., 188, it was held that the right of corporators to vote at elections for directors was a property right, and that a provision of law providing for cumulative voting would not apply to a corporation which held its charter from the legislature where the charter provided that each stockholder should have one vote for each share of stock, and that the directors should be elected by vote of the stockholders, and contained the further provision that the legislature should have no power to alter, suspend, or repeal the charter. It was further held that if the mode of voting is prescribed by an irrepealable charter,

it is protected by that provision of the Constitution of the U. S. which prohibits the States from passing laws impairing the obligation of contracts.

30 In the case of Smith *v.* Atchinson, T. & S. F. R. Co., *supra*, it was held that a law passed in 1876 providing for cumulative voting would not apply to a corporation obtaining its charter while Kansas was a Territory, though the constitution adopted when Kansas became a State contained a provision providing for the amendment and repeal of acts conferring corporate powers. The constitution had a provision that all laws and parts of laws in force in the Territory * * * shall continue and remain in full force until they expire or shall be repealed. The territorial statute in force when the charter was granted contained the following provision:

"The charter of every corporation that shall hereafter be granted by law, shall be subject to alteration, suspension or repeal by any succeeding legislature providing such alteration * * * or repeal shall in nowise conflict with any right vested in such corporation by its charter."

The court said: "Whether or not this act was in force at the time defendant's charter was granted it is not necessary to decide, as the proviso in this section has extracted the meat and left only the shell."

The case of Howell *v.* D. & H. P. R. Co., 43 Mich., 140, was a case where a charter had been accepted by a corporation which had built a plank road and erected toll-gates. It was sought by an amendment to require the company to remove a toll-gate and to vacate that portion of its roads then within the city of Detroit without compensation. In an opinion written by Justice Cooley it was held that "the effect of the proposed amendment," if valid, "would be to take from the corporation about two miles and a half of the road upon which it collected toll, and that the legislature cannot, under its power to amend a charter, take from the corporation any of its substantial property; * * * that if the State may deprive the corporation of the right to take tolls on two

31 miles and a half of its road it may in respect to any other part and * * * may annihilate the property of the corporation altogether, and that a statute which could have this effect would not be a statute to amend franchises, but a statute to confiscate property; it would not be a statute of regulation, but of spoliation."

We do not think any of these cases when analyzed go so far as to sustain the claim of counsel for respondents. It is claimed by the counsel that the method of electing the directors of the Michigan Mutual Life Insurance Company was made in pursuance of the statute and constitutes a contract between the stockholders of the company, which the legislature cannot set aside, and it is asserted that the minority stockholders' law changes the contract between the stockholders and is therefore within the constitutional provision which forbids impairing the obligation of contracts.

It would seem to be a complete reply to this view to say that the

stockholders knew when they entered this corporation that the Constitution reserved to the legislature the right to amend, alter, or repeal the law under which the corporation was organized. Thompson on Cor., sec. 89.

The stockholders are as much bound by this constitutional provision as though it was contained in the articles of incorporation. Parker *v.* Metropolitan R. R. Co., 109 Mass., 506. In this case it was said: "Many cases have arisen in this court involving the construction and application of the power to amend or alter charters. The reservation of power is broad and comprehensive. Whatever may be its limitations, it at least reserves to the legislature the right to make any reasonable amendments regulating the mode in which the franchise granted shall be used and enjoyed which do not defeat or essentially impair the object of the grant or take away any property or rights which have become vested under a
32 legitimate exercise of the powers granted." Meadow Dam Co. *v.* Gray, 30 Me., 547; Shields *v.* Ohio, 95 U. S., 324.

In the case of Hamilton Gas Light Co. *v.* Hamilton, 146 U. S., 270, it was held, in an opinion written by Justice Harlan, "A legislative grant to a corporation of special privileges, if not forbidden by the constitution, may be a contract; but where one of the conditions of the grant is that the legislature may alter or revoke it, a law altering or revoking or which has the effect to alter or revoke the exclusive character of said privileges cannot be regarded as one impairing the obligation of the contract, whatever may be the motive of the legislature or however harshly such legislation may operate in the particular case upon the corporation or parties affected by it. The corporation by accepting the grant subject to the legislative power so reserved by the constitution must be held to have assented to such reservation." See also Greenwood *v.* Freight Co., 105 U. S., 13, which is a very interesting case, containing full discussion of this subject. In Market Street R'y Co. *v.* Hellman, 109 Calif., 571, it was held that when an individual becomes a stockholder in a corporation it is with the implied assent on his part to the right of the legislature to alter and amend the law within the scope of the constitutional provision, and is as binding upon him as a contract to the like effect of his own making would be.

This was a case providing for the consolidation of corporations by a majority of the stockholdors, without regard to the desire of stockholders opposing the consolidation.

In R. R. Co. *v.* Georgia, 98 U. S., 359, it was held that a corporation held the rights granted to it under and subject to the law as it was when the new charter was granted, and that where the law in existence when the corporate franchise was granted provided "that the franchise was subject to be changed, modified, or destroyed at the will of the creator," the franchise was held subject to these provisions.

33 We understand the rule in relation to the reservation of power to amend, alter, or repeal to be correctly stated in Packer *v.* Metropolitan R. R. Co., already quoted; and as stated by Justice Gray, "A power reserved to the legislature to alter, amend,

or repeal a charter authorizes it to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant or any rights vested under it, and which the legislature may deem necessary to secure either that object or any public right." Sinking Fund cases, 99 U. S., 700.

The nature of a corporation is therefore an important consideration in determining the extent of the reserved right of the State to alter or amend its charter. Is it a corporation in which the public is interested? If so, the legislature may exercise the reserve power as just stated. Is not the public interested in the proper control and management of great life insurance companies like the Michigan Mutual Life Insurance Company? Is it not true that their incomes are largely drawn from the public, and that the proper or improper management of the company's affairs affect the public as well as the stockholders? Is it not true that the policy-holders of the company are quite as much interested in what becomes of the assets of the company as the stockholders themselves? The answer to each of these questions must be in the affirmative. For cases in which the power to alter, amend, or repeal charters or acts of incorporation have been exercised see—

Fitchburg R. R. Co. *v.* G. J. R. R. Co., 4 Allen, 198.
Durfee *v.* R. R. Co., 5 Allen, 230.
Roxbury *v.* Boston R. R. Co., 6 Cush., 424.
Mass. Gen. Hosp. *v.* State Assur. Co., 4 Gray, 227.
Commonwealth *v.* East R. R. Co., 103 Mass., 254.
Commissioners *v.* Holyoke Co., 104 Mass., 446.
Mayor *v.* Norwich R. R. Co., 109 Mass., 103.
34 Parker *v.* Metropolitan R. R. Co., 109 Mass., 506.
Penn Col. cases, 13 Wall., 478.
Holyoke Co. *v.* Lyman, 15 Wall., 500.
Oldtown R. R. Co. *v.* Veazie, 39 Me., 581.
R. R. Co. *v.* Greenbush, 5 Lansing, 461.
Plank Road Co. — Thatcher, 11 N. Y., 102.
Buffalo *v.* Dudley, 14 N. Y., 336.
In re Lee & Co. Bank, 21 N. Y., 9.
Railroad Co. *v.* Brownell, 34 N. Y., 345.
Railroad Co. *v.* Miller, 10 Barb., 260.
White *v.* Railroad Co., 14 Barb., 559.
Hyatt *v.* McMahon, 25 Barb., 457.
Anderson *v.* Commonwealth, 18 Grattan, 295.
Joslyn *v.* Steamship Co., 12 Abb. Pr., N. S., 329.
Sherman *v.* Smith, 1 Black, 587.
Perrin *v.* Oliver, 1 Minn., 202.
Iron City Bank *v.* Pittsburgh, 37 Penn. St., 340.
Commonwealth *v.* Railroad Co., 55 Penn. St., 452.
Shields *v.* Ohio, 95 U. S., 324.
Railroad Co. *v.* Maine, 96 U. S., 510.
Greenwood *v.* Union Freight Co., 105 U. S., 13.
Close *v.* Glenwood Cemetery, 107 U. S., 466.
Spring Valley W. Works *v.* Schottler, 110 U. S., 348.
Hamilton Co. *v.* Hamilton, 146 U. S., 258.
Bissell *v.* Heath, 98 Mich., 472.

We do not think it can be said that the minority law changes the character of the business in which the Michigan Mutual Life Ins. Co. is engaged, or that it takes away any substantial right acquired by the corporation. It changes the terms of office of the directors and provides for a representation on the board of directors of a minority of the stockholders. We do not think this disturbs any vested right such as is referred to by the cases cited by counsel for respondent—see Miller *vs.* State, 15 Wallace, 478—and that the minority law is constitutional.

35 It is objected that *quo warranto* is not the remedy. *Quo warranto* was brought in many of the cases cited—The State *ex rel.* Hausler *v.* Green, *supra;* Hay *sv.* Com.—and we think it the proper remedy. Frey *v.* Michie, 68 Mich., 323. The relators were elected as directors, and should have been so declared. In view of the fact that the annual meeting of the stockholders will be held so soon, it will not be necessary to make any further order in the proceeding. Costs are given to relators.

J. B. MOORE.
R. M. MONTGOMERY.
CHAS. D. LONG.
FRANK A. HOOKER.
C. B. GRANT.

Endorsed: Filed Jan. 25, 1897. Chas. C. Hopkins, clerk supreme court.

36 At a session of the supreme court of the State of Michigan held at the supreme court room, in the capitol, in the city of Lansing, on the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable Charles D. Long, chief justice; Claudius B. Grant, Robert M. Montgomery, Frank A. Hooker, Joseph B. Moore, associate justices.

THE ATTORNEY GENERAL *ex Rel.* JOSEPH W. DUSENBURY and WILL J. DUSENBURY, Relators, *vs.* OSCAR R. LOOKER, CHARLES A. KENT, WILLIAM S. Green, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney, Respondents.	# 15729.

This cause having been heretofore submitted to the court and an opinion filed sustaining the validity of the stockholders' minority law of 1885, on motion of F. A. Baker, attorney for the relators, it is ordered and adjudged by the court that the said respondents and each of them be, and they are hereby, ousted from office as members of the board of directors of the Michigan Mutual Life Insurance Company; and it is further ordered and adjudged that on the twenty-eighth day of January, 1896, the relators, Joseph W. Dusenbury and Will J. Dusenbury, were regularly elected members of

said board of directors, to hold office from that date until their successors are elected, according to law; and on like motion it is further ordered that the relators recover of the respondents their costs of suit, to be taxed, and that they have execution for the collection of the same.

37 STATE OF MICHIGAN:

In the Supreme Court.

FRED A. MAYNARD, Attorney General of the State of Michigan, at the Relation of Joseph W. Dusenbury and Will J. Dusenbury, Relators,

vs.

OSCAR R. LOOKER, CHARLES A. KENT, WILLIAM S. GREEN, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney, Respondents.

To the Hon. Charles D. Long, chief justice of the supreme court of Michigan:

The respondents in this cause, Oscar R. Looker *et al.*, hereby petition your honor to allow a writ of error in this cause from the Supreme Court of the United States to the supreme court of Michigan on the ground that in the judgment in this cause, as well as in the opinion of the court, there is involved a Federal question, which has been decided adversely to said respondents. The question is whether — not the so-called minority representation act (Howell, vol. 3, sect. 4885*a*) is, as applied to said respondents, in conflict with various provisions of the Constitution of the United States, and especially to the provision against impairing the obligation of contracts.

C. A. KENT,
Attorney for said Respondents.

[Endorsed:] State of Michigan. In the supreme court. The Attorney General of Michigan at the relation of Joseph W. Dusenbury and Will J. Dusenbury *v.* Oscar R. Looker *et al.*, respondents. Petition for allowance of writ of error from the Supreme Court of the United States to the supreme court of the State. Filed Feb. 18, 1897. Chas. C. Hopkins, clerk. C. A. Kent, att'y for respondents & petitioners.

38 STATE OF MICHIGAN:

In the Supreme Court of Michigan.

THE ATTORNEY GENERAL OF THE STATE OF MICHIGAN, FRED A. Maynard, on the Relation of Joseph W. Dusenbury and Will J. Dusenbury, Relators,

v.

OSCAR R. LOOKER, CHARLES A. KENT, WILLIAM S. GREEN, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney, Respondents.

Assignment of Errors.

And now comes said respondents, by C. A. Kent, their attorney, and alleges that in the judgment of the court in this cause there is manifest error:

1. That the court erred in holding that the election of respondents as directors of the Michigan Mutual Life Insurance Company, a corporation organized under chapter one hundred and thirty-one of Howell's Annotated Statutes of Michigan, vol. 1, p. 1072, in accordance with article IV of the articles of association of said company, was illegal in consequence of the minority representation act found in said Howell's Statutes, vol. 3, sect. 4885*a*. The judgment of said court in said holding is in conflict with the Constitution of the United States, and especially with the provision which
39 forbids States to impair the obligation of contracts, and also that clause of the fourteenth amendment which forbids the States to deprive any person of his property without due process of law.

2. Said judgment is also erroneous in deciding that said relators were properly elected by cumulative voting under said minority representation act, and that in consequence they and not said respondents were properly elected directors.

3. Said judgment is erroneous in directing that said respondents be ousted from their offices as said directors and said relators take their places.

4. Said judgment is erroneous because it is in favor of said attorney general and said relators and against said respondent, whereas it ought to have been in favor of said respondents and against said attorney general and said relators.

For the errors alleged said respondents pray that the said judgment be reversed and judgment be entered against said attorney general and said relators with costs.

C. A. KENT,
Attorney & of Counsel for said Respondents.

[Endorsed:] State of Michigan. In the supreme court. The Att'y General *ex rel.* Dusenburys, relators, *v.* Oscar R. Looker *et al.*, respondents. Assignment of errors. Filed Feb. 18, 1897. Chas. C. Hopkins, clerk. C. A. Kent, att'y for respondents.

40 *Copy of Bond.*

Know all men by these presents that we, Oscar R. Looker, Charles A. Kent, William S. Green, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney, as principals, and Albert H. Wilkinson and Hoyt Post, as sureties, are held and firmly bound unto Fred A. Maynard, attorney genera. of the State of Michigan, in the full and just sum of one thousand (1,000) dollars, to be paid to the said Fred A. Maynard, attorney general of the State of Michigan, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of ——, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at a session of the supreme court of the State of Michigan, in a suit depending in said court between said Fred A. Maynard, attorney general of the State of Michigan, on the relation of Joseph W. Dusenbury and Will J. Dusenbury, relators, a judgment was rendered against the said Oscar R. Looker, Charles A. Kent, William S. Green, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney, and the said Oscar R. Looker, Charles A. Kent, William S. Green, William A. Moore, Louis H. Chamberlain and William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Fred A. Maynard, attorney general of the State of Michigan, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within — days from the date thereof:

Now, the condition of the above obligation is such that if
41 the said Oscar R. Looker, Charles A. Kent, William S. Green, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney shall prosecute their said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

O. R. LOOKER. [L. S.]
CHARLES A. KENT. [L. S.]
WM. S. GREEN. [L. S.]
WM. C. COLBURN. [L. S.]
WM. A. MOORE. [L. S.]
LEWIS H. CHAMBERLAIN. [L. S.]
BENJAMIN J. CONRAD. [L. S.]
JOHN J. MOONEY. [L. S.]
MICHAEL J. MOONEY. [L. S.]
ALBERT H. WILKINSON. [L. S.]
HOYT POST. [L. S.]

Approved by—
CHAS. D. LONG,
Chief Justice of the Supreme Court of Michigan.

Endorsed: Filed Feb. 18, 1897. Chas. C. Hopkins, clerk.

42 UNITED STATES OF AMERIC[illegible], *ss:*

To Fred A. Maynard, attorney general of the State of Michigan, on the relation of Joseph W. Dusenbury and Will J. Dusenbury, relators, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Michigan, in a suit wherein Oscar R. Looker, Charles A. Kent, William S. Green, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles D. Lond, chief justice of the supreme court of Michigan, this 13th day of February, in the year of our Lord one thousand eight hundred and ninety-seven.

CHAS. D. LONG,
Chief Justice of the Supreme Court of Michigan.

43 [Endorsed:] State of Michigan. In the supreme court of Michigan. The Attorney General of the State *ex rel.* Joseph W. Dusenbury & Will J. Dusenbury *v.* Oscar R. Looker *et al.*, respondents. Citation to appear in the Supreme Court of the United States on behalf of said respondents, pl'ffs in error. Filed Feb. 19, 1897. Chas. C. Hopkins, clerk. C. A. Kent, att'y for respondents and pl'ffs in error.

STATE OF MICHIGAN, } *ss:*
Wayne County, }

On this 18th day of February, in the year of our Lord one thousand eight hundred and ninety-seven, personally appeared C. A. Kent before me, the subscriber, a notary public for the county of Wayne, State of Michigan, and makes oath that he delivered a true copy of the within citation to Fred A. Maynard, attorney general of the State of Michigan, def't in error, and to Fred A. Baker, attorney for the relators in said cause.

Sworn to and subscribed the 18th day of February, A. D. 1897.

[Seal Notary Public, Wayne Co., Mich.]

KITT B. O'MARA,
Notary Public, Wayne Co., Mich.

LANSING, MICHIGAN, *Feb'y* 17, 1897.

I hereby acknowledge due service of the above citation.

FRED A. MAYNARD,
Attorney General of the State of Michigan.
FRED A. BAKER,
Attorney for Relator.

44 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Michigan, before you or some of you, between Fred A. Maynard, attorney general of the State of Michigan, on the one side, and Oscar R. Looker, Charles A. Kent, William S. Green, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney, respondents, a manifest error hath happened, to the great damage of the said Oscar R. Looker, Charles A. Kent, William S. Green, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney (it plainly appearing that a Federal question is involved in said judgment, to wit, whether a certain statute of Michigan is, as applied in said judgment, *is* in conflict with the provisions of the Constitution of the United States, which question has been decided adversely to said respondents), as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Circuit Court, Eastern District of Michigan.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 13th day of February, in the year of our Lord one thousand eight hundred and ninety-seven.

WALTER S. HARSHA,
Clerk of the Circuit Court of the United States for the Eastern District of Michigan.

Allowed by—

CHAS. D. LONG,
Chief Justice of the Supreme Court of the State of Michigan.

45 [Endorsed:] State of Michigan supreme court. The Attorney General *ex rel.* Joseph W. Dusenbury & Will J. Dusenbury *v.* Oscar R. Looker *et al.*, respondents. Writ of error on behalf of respondents, plaintiffs in error, from the Supreme Court of the United States. Filed Feb. 18, 1897. Chas. C. Hopkins, clerk. C. A. Kent, attorney & of counsel for pl'ffs in error.

46 Supreme Court of the State of Michigan.

THE ATTORNEY GENERAL *ex Rel.* JOSEPH W. DUSENBURY and WILL J. DUSENBURY, Relators,

vs.

OSCAR R. LOOKER, CHARLES A. KENT, WILLIAM S. GREEN, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney, and Michael J. Mooney, Respondents.

STATE OF MICHIGAN, } ss:
In the Supreme Court, }

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court, including the written decision and reasons therefor, signed by the judges of said court, and filed in my office, as appears of record and on file in my office; that I have compared the same with the original, and it is a true transcript therefrom and of the whole thereof; that attached thereto are the writ of error, with allowance endorsed thereon; the citation, with acceptance of service endorsed thereon by counsel for the relators; a copy of the bond to the adverse party filed with the writ of error, and the assignment of errors in the Supreme Court of the United States.

Seal of the Supreme Court of Michigan, Lansing.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this sixth day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

CHAS. C. HOPKINS,
Clerk of the Supreme Court of the State of Michigan.

Endorsed on cover: Case No. 16,513. Michigan supreme court. Term No., 321. Oscar R. Looker, Charles A. Kent, William S. Green, *et al.*, plaintiffs in error, *vs.* Fred A. Maynard, attorney general of the State of Michigan, on the relation of Joseph W. Dusenbury and Will J. Dusenbury. Filed March 10th, 1897.

Supreme Court of the United States.

October Term, 1897.

No. 321.

OSCAR R. LOOKER, CHARLES A. KENT, WILLIAM S. GREEN, *et al.*
Plaintiffs in Error,
vs.
FRED A. MAYNARD, Attorney General of the State of Michigan, on the relation of JOSEPH W. DUSENBURY and WILL. J. DUSENBURY.

In Error to the Supreme Court of the State of Michigan.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

This court is asked to review the judgment of the Supreme Court of Michigan. The only federal question

involved is, whether or not the judgment of the state court enforces a state statute which, as construed, is in conflict with the constitution of the United States.

The Attorney General of Michigan filed in the state supreme court an information to try the title of plaintiffs in error to the position of directors in the Michigan Mutual Life Insurance Company.

This company was organized July 3, 1870, under an act for the formation of life insurance companies, approved March 30, 1869, and constituting chapter 131 of Howell's Annotated Statutes.

Section 2 of said act provides: "The persons so associating shall subscribe articles of association which shall contain," (paragraph 4,) "The manner in which the corporate powers are to be exercised, the number of directors, and other officers, and the manner of electing the same, and how many of the directors shall constitute a quorum, and the manner of filling vacancies;" and in paragraph 7, "Any terms and conditions of membership therein which the corporators may have agreed upon, and which they may deem important to have set forth in said articles."

Section 5 of said act provides: "The articles of association shall be submitted to the attorney general for his examination, and if found by him to be in compliance with this act, he shall so certify to the secretary of state." All the requirements of this act were complied with, and the company has been doing business ever since. Said articles of association contain the following: "The corporate powers of the company shall be exercised by a board of directors, which shall consist of twenty-one members, which may be increased at the option of the board to not more than forty. The first meeting for the election of directors shall be called by the present officers, and held as soon as possible after these articles take effect. No person shall be eligible who is not the owner of at least ten

shares of the guarantee capital of the company, and at least two-thirds of the directors shall be residents of the state of Michigan. The board at their first meeting shall divide themselves by lot into three equal classes, as near as may be, whose terms of office shall expire at the end of one, two and three years respectively, and thereafter one-third of the directors shall be chosen annually for the class, whose term then expires, who shall hold office for three years, or until their successors are elected. The election of directors shall be had at the annual meeting of the company, which shall be held on the last Tuesday in January, at the office of the company in Detroit. They shall be chosen by ballot, and a majority of the votes cast shall elect. Every shareholder shall be entitled to one vote for directors for every share of guarantee capital standing in his name on the books of the company, and may vote in person or by proxy, and every policy holder insured in this company for the period of his natural life, in the sum of not less than five thousand dollars, shall also be entitled to one vote in the annual election of directors which vote must be given in person."

Directors have always been elected in accordance with these provisions.

In 1885, the legislature of Michigan passed an act entitled "An act to secure the minority of stockholders in corporations, organized under general laws, the power of electing a representative membership in boards of directors." Section 1, reads: "The people of the state of Michigan enact: That in all elections for directors of any corporation organized under any general law of this state other than municipal, every stockholder shall have the right to vote in person or by proxy the number of shares of stock owned by him for as many persons as there may be directors elected, or to cumulate said shares and give one candidate as many votes as equal the number of directors

multiplied by the number of shares of his stock, or to distribute them on the same principles among as many candidates as he shall think fit. All such corporations shall elect their directors annually, and the entire number of directors shall be balloted for at one time, and not separately."

The constitution of Michigan, adopted in 1850, contains the following: "Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes; all laws passed pursuant to this section, may be amended, altered or repealed."

At the annual election of directors, January 28, 1896, relator J. W. Dusenbury, undertook to vote his stock according to said minority law. He voted for himself and relator Will J. Dusenbury. If his claim had been allowed, each of relators would have had 5571 votes, and would have been elected. His claim was rejected, and the votes were counted according to the articles of association, and in accordance therewith, all of respondent's, nine in number, were declared elected for a term of three years.

The judgment of the Supreme Court of Michigan was, that respondents be all ousted from office as directors of the Michigan Mutual Life Insurance Company, and that relators were elected, and will hold office until their successors are elected. The respondents claim that this judgment deprives them of rights secured by the constitution of the United States. The provisions relied on are, that, forbidding states to pass laws impairing the obligation of contracts and that against taking property without due process of law.

I.

The articles of association of the Michigan Mutual Life Insurance Company as to the method of electing directors constituted a legal contract between the original stockholders, binding on their successors, protected by the constitution of the United States against State interference, except so far as the power to change the contract, has been reserved.

1. The persons associating are not merely permitted, they are required to put in their articles of association, "The manner in which the corporate powers are to be exercised, the number of directors and other officers, and the manner of electing the same, and how many directors shall constitute a quorum, and the manner of filling all vacancies."

These things had to be determined by agreement before put in the articles. The agreement must have been that of the persons associating. It is sometimes said that the articles of association are an agreement of the persons associating with the corporation, but this seems inaccurate. How can a corporation make an agreement before it has begun to exist? The agreement must be that of the associators. When made as the law requires, the articles constitute the constitution of the company. That the law contemplates the articles of association to be made by an agreement, is evident from the 7th paragraph, which provides, "any terms and conditions of membership therein, which the corporators may have agreed upon, and which they may deem important to have set forth in such articles." The law carefully provides against putting in the articles any thing improper, by the provision that they must be submitted to the attorney general, and approved by him.

This law is unusual. Generally, the statute provides for the government of corporations by mandatory provisions. Here, the matter is designedly and explicitly left to the agreement of the corporators, and this offer of the power of agreement is made for the benefit of the corporators to induce them to engage in a proposed enterprise.

Articles of association are generally contracts by the members.

Cook on Stock and Stockholders, Sec. 492.
Zabriskie vs. Hackensack R. R Co., 18 N. J. Eq., 178.
Snook vs. Georgia Improvement Co., 83 Geo., 61.
Morawitz on Corporations, Vol. 1, Sec. 43 and seq.

2. It is uniformly held, that where the charter of a company provides a method of electing directors and there is no reservation of a power to change, the legislature has no power to change such provisions in favor of minority representation. If this is true when the provision is embodied in a contract with the state, it must be more true when the contract is between the corporators.

In *Hays vs. Commonwealth*, 82 Pa. St., 518, a case of a charter where no power of change is reserved, it is held, that a minority representation provision of the state constitution cannot apply, and the court say on page 522, as to this provision, "Now, while it cannot be said that this would not be an alteration in the terms of the charter, it is nevertheless urged that it is a mere regulation of the right of suffrage in corporations, but affects the vested rights of no one. But if it be not a vested right in those who own the major part of the stock of a corporation to elect, if they see proper, every member of the board of directors, then I would like to know what a vested right means. This was

part of the contract under which they entered into the company, and for which they paid their money. The compact was, that they should have the power to select those who should have the management and control of the funds which they had ventured in the enterprise. If, indeed, it be admitted that the minority in a board of directors amounts to nothing, the above stated proposition would not be admissible, but we cannot seriously entertain such an idea, for it was just because a minority does amount to something, and because it can often control or modify the acts of a majority, that the introduction of the constitutional provision under discussion was thought necessary."

The above case is aproved and followed in

Baker's Appeal, 109 Pa. St., 461.
State vs. Greis, 78 Mo., 188.
Smith vs. Atchinson R. R. Co., 64 Fed., 272.

There are no contrary decisions.

II.

No power has been reserved to change the contract of the corporators of the Michigan Mutual Life Insurance Company, as to the method in which the directors are to be elected.

The power is claimed only under the provision of the state constitution, reading thus:

"Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed."

The corporation in question was organized under a

general law, and hence I do not see any limit to the power of alteration or repeal of the law, independent of the reservation. If there is a doubt the reservation clears it away. The legislature can repeal or amend the statute in question just as it can repeal or amend any general law of the state, but no further.

1. The repeal or amendment of the law would not affect the contract between the corporators as to management of their property.

(a) The repeal of the law would only take away their powers to continue the business of insurance as a corporation. Unless forbidden the stockholders could continue the business of life insurance as a partnership. At any rate, they could wind up the business in the name of the corporation, and the method of electing directors would continue as before.

Bewick vs. Alpena Harbor Co., 39 Mich., 700.

(b) Any amendment of the law like an amendment to any other law would not affect lawful contracts entered into before the amendment. The amendment might forbid any new corporations to make agreements except in accordance with the minority representation statute. But surely the power to amend does not cover the power to change pre-existing contracts. This will not be disputed as to contracts made by the corporation with third parties. And I do not see why contracts made by the corporators as to the method in which they shall control their own property on the faith of which they made their investments, should not be held as sacred as any other contracts. It will hardly be claimed that the property of the stockholders in the Michigan Mutual Life Insurance Company, either what was originally put in, or what has been ac-

quired since can be taken away by the legislature. But the control of property is of its very essence. And if the property cannot be taken away neither can its control be changed. If the legislature can change the method chosen by the corporators for the government of the corporation so as to compel minority representation, it can make any other change. It can give the whole control to a minority. It may deprive the majority of the management of the company. When the sacred right of the stockholders to manage their property according to their agreement is taken away, the only further limit is the discretion of the legislature.

It may be claimed that if the legislature can authorize corporators to make unalterable contracts between themselves, the purpose of the constitutional provision under consideration will be defeated. This leads to my next head.

2. The provision in state constitutions authorizing the amendment or repeal of all laws for the formation of corporations, is intended simply to protect the public against corporation monoplies and corporation abuses. It is not designed to affect the contracts of the corporators among themselves as to the control of their interests in the property. There is no more reason why the state should be interested in the contracts of corporators as to the methods in which they may vote their stock, than in the contracts of partners as to the control of their partnership property. The state is not interested in making all contracts, subject to amendment or repeal, at the will of its legislature, and so evading the provision of the constitution of the United States, as to the impairment of the obligation of contracts. Its object is to protect itself against a certain class of contracts, which have been found to constitute a public injury.

The opinion of the Supreme Court of Michigan, (Record, p. 19,) is put on the ground, that the public is interested in the control of a great life insurances company like the Michigan Mutual, that the policy holders are as much interested as the stockholders. This is true, but this interest of the public is provided for by abundant provisions of the act, requiring reports of the condition of the company, and authorizing examinations of the assets by public officers. If these provisions in practice prove insufficient, they may be amended or new provisions added. But surely, the state is not interested in having all the directors elected each year, instead of having them elected in three divisions, each serving for three years. Nor can it make any difference with the public, whether or not a certain minority of the stock may elect one or more directors.

The method of electing directors by a majority vote of all the stock was, until recently, the almost universal one. It was changed, in some states, not because any evil was thought to have resulted to the public from the old method, but in order to favor minorities of a certain size. The public is abundantly protected, if the affairs of a Life Insurance Co. are managed according to law, honestly, and with good judgment. There can be no presumption that the management of a board of directors elected with minority representation will be better than that of one elected in the old way, and certainly the powers of the policy holders are not increased by minority representation of the stockholders.

The question is not whether the legislature of Michigan under the constitution of the state may allow persons about to incorporate to regulate by contract among themselves, the general powers of the corporation, which affect the public, but only whether such power to contract may be given as to the rights of the incorporators among them-

selves. Such power now exists among all unincorporated associations, and no public interest is suffering in consequence.

III.

I have found no cases in conflict with the view I seek to maintain, though there may be some, which appear to be so.

Sherman v. Smith, 1 Black, 587.

A new York bank was organized under a general law subject to amendment and repeal providing that the stockholders should not be personally liable unless they put in their articles a provision for such liability. The bank in question provided in its articles against personal liability, and this was claimed to be a contract within the provisions of the United States constitution. Held that the law did not authorize such a contract, and that putting a provision of the law in the contract, without authority, did not prevent the law from being changed.

Like this last case are *In Re* Lee & Co. Bank, 21 N. Y., 9, and the Reciprocity Bank, 22 N. Y., 9.

The difference between these cases and the one at bar is obvious. In them there was no authority given in the general law for the corporators to make a contract, as to their liability. This was determined by a general law, which like all general laws was liable to change. The question was one which concerned the public, and not merely the control of their own property by the corporators.

In *Close v. Greenwood Cemetery*, 107 U. S., 466, it was held that Congress could change the government of a cemetery association so as to fix the interest of the origi-

nal proprietors and give a large number of lot owners a certain power of control.

The law under which the association was organized did not provide that the original corporators should agree on the power of control, and Congress is not subject to the limitations on the States in the United States constitution. The change made was in the interest of the lot owners, and not of a minority of the stockholders.

Penn. College Cases, 13 Wallace, 190.

Here three colleges were united against the protest of the trustees of one and of a number of persons who had bought scholarships. The union was sustained. The new college was bound by the scholarships given by the old one. The difference between this case and the one at bar is plain. The trustees had no property interest in the old college. They had no agreement as to its management. The whole matter concerned public and not private rights.

Spring Valley Water Works v. Schottler, 110 U. S., 347.

A general law subject to amendment or repeal, gave the power of fixing water rates to a board appointed in part by the corporations, and in part by the municipalities. This was amended, so as to give the power entirely to the municipal authorities. The amendment was held valid. It was considered but a change in the general law, and so within ordinary legislative power.

Greenwood vs. Union Freight Co., 105 U. S., 13.

This was a case where a charter was repealed. It was held, that whatever the legislature gives, when the right of repeal is reserved, it may take away. I have no quarrel with this doctrine, nor with the view that the legislature

may alter any franchise it gives in behalf of the public. Nor do I doubt that the stockholders of a company take all their rights subject to the reserved rights of the legislature to amend or repeal. The whole question at bar is, whether or not the right of amendment reaches to the private right of the stockholders, secured by a lawful agreement among themselves to control the property of the company in a manner which does not concern public interest.

IV.

There is little direct authority in support of my position, but principles have been announced in the cases which cover all I claim.

In *Sage vs. Dullard*, 15 B. Monroe, 340, it was decided that a charter given to a Theological Seminary, providing for its government by a number of trustees, who were authorized to fill vacancies, could not, under the reservation of a power to amend, be changed by the legislature by adding sixteen new trustees. On page 359 there is a good discussion of the principles involved.

Orr vs. Bracken County, 81 Ky., 593.

A plank road company was organized under a charter reserving the right of amendment, which provided for the election of a president, treasurer, and ten directors. The stockholders were not entitled to a vote for each share of stock, but the vote was so regulated as not to give the largest stockholders the right to elect. The legislature amended the charter so as to reduce the number of directors to six, and allow each stockholder a vote for each share of stock. The amendment was held void. The court say,

p. 596: "The right to amend the charter may be expressly reserved, but that right does not confer the power of taking from the corporators the control of the corporate property, or to change the object of the charter by taking from those having a right to select their officers that right and placing it in the hands of those whose stock by reason of the increased power conferred by the amendment are enabled to control the corporation."

Zabriskie vs. The Hackensack R. R. Co., 18 N. J. Eq., 178.

On page 185, the Chancellor, in discussing the reserved power to amend or repeal corporate acts, says: "The object and purpose of these provisions are so plain that it seems strange that any doubt could be raised concerning it. It was a reservation to the state for the benefit of the public to be exercised by the state only. The state was making what had been decided to be a contract, and it reserved the power to change by altering, modifying or repealing the contract. Nejther the words nor the circumstances, nor apparent objects for which the provision was made, can by any fair construction extend to giving a power to one part of the corporators as against the other, which they did not have before."

Snook vs. Georgia Improvement Co., 83 Geo., 61.

On page 85, it is held, "that the charter of a corporation is a contract of a dual character; first, a contract between the state which grants the charter, and the corporation; and second, a contract between the corporation and its members; and while the state, if it reserves the power to do so, can alter and amend the charter, and the corporation itself cannot object to the alteration or amendment, yet,

the state has no power to make any material essential alteration in the contract between the members themselves and the corporation."

Fisher vs. Patton, 33 S. W., 451.

On page 456, it is held, that a contract between a building and loan association, and its stockholders, valid when made, cannot be changed by an act of the legislature.

Detroit vs. Detroit & Howell R. R. Co., 43 Mich 140.
People vs O'Brien, 111 N. Y., 1.

In these cases it is held, after the fullest consideration, that rights in the streets of a city acquired by the exercise of the franchises of a corporation, cannot be taken away by any amendment or repeal, however broad may be the reservations.

Hill vs. Glasgow R. Co., 41 F., 610.

In giving the opinion of the court, Judge Jackson, after quoting from the decisions of this court, says: "The principle of these and other decisions upon the subject of amending or repealing charters under a reservation of power to do so, is that the legislature may change or modify the privileges and franchises which the state has granted the corporation, and which concern the interest of the public, but dealing with what it has bestowed either by way of withdrawal or alteration, the state may not go further and so legislate as to disturb, affect or impair rights either of the corporation or of its shareholders previously acquired while the corporate franchises were being legally exercised. All rights thus acquired of whatever character are surrounded and protected by constitutional sanctions and guarantees higher and superior to the legislative power of amendment or repeal."

Southern Pacific Co. vs. Board of Commissioners, 78 F., 236.

In this case there is citation of the authorities and a discussion of the limits of the power to amend or repeal corporate rights.

Tomlinson vs. Jessup, 15 Wallace, 454.

On page 459, this court, in reference to the power to amend or repeal, say: "The reservation affects the entire relation between the state and the corporation, and places under legislative control all rights, privileges and immunities derived by its charter directly from the state. Rights acquired by third parties, and which have become vested under the charter in the legitimate exercise of its powers, stand on a different footing."

Shields vs. Ohio, 95 U. S., 319.

On page 324 this court say, "The power of alteration and amendment is not without limit. The alterations must be reasonable; they must be made in good faith, and be consistent with the scope and object of the act of incorporation." And again, "Beyond the sphere of reserved powers, the vested rights of property of corporations are surrounded by the same sanctions and are as inviolable as in other cases."

Greenwood vs. Freight Co., 105 U. S., 13.

On page 19 this court say, "In short, whatever power is dependent solely upon the grant of the charter and which could not be exercised by unincorporated private persons under the general laws of the state is abrogated by the repeal of the law which granted these special rights. Personal and real property acquired by the corporation during its lawful existence, rights of contract, or choses in action so acquired, which do not in their nature depend upon the

general powers confered by the charter are not destroyed by such repeal. The rights of the shareholders of such a corporation to their interest in its property are not annihilated by such repeal."

If the law under which the Michigan Mutual was organized had been repealed, I know of no reason why the stockholders might not have continued life insurance as partners. The only limitation of the right to do such business is found in this law. Howell's Statutes, Sect. 4237.

On this repeal the business would have been open to every one. And the management of the business, in the absence of some new agreement, would have been controlled by the agreement in the articles of association.

And if the legislasure could not have taken away by repeal of the act, the power of the stockholders to do business according to their agreement, it would seem certain that no amendments can reach such a result. If the property of the stockholders is preserved in spite of a repeal or any possible amendment, this property must remain under the control of such stockholders. And the manner of control should be that on which the stockholders have agreed.

V.

Another error alleged is that the judgment of the court below deprives respondents and other stockholders of their right to participate in the management of their property, according to their agreement, without due process of law, in violation of the fourteenth amendment. The subject of vested rights in the control of property is so ably argued in three dissenting opinions in the *Sinking*

Fund Cases that I need only to refer to them, 99 U. S., p. 731, *and seq.*

Though the majority of the court did not agree with the dissenting judges in the decision of that case, yet the difference was probably not in the principles advocated but in their application to the case then at bar.

I submit that the judgment of the court below should be reversed.

C. A. KENT,

Of Counsel for Plaintiff in Error.

Supreme Court of the United States.

No. 4.—October Term, 1900.

Oscar R. Looker et al., Plaintiffs in Error,
vs.
Fred A. Maynard, Attorney General of the State of Michigan, on the relation of Joseph W. Dusenbury and Will J. Dusenbury.

In error to the Supreme Court of the State of Michigan.

This was an information in the nature of a *quo warranto*, filed August 1, 1896, in the Supreme Court of the State of Michigan, by Fred A. Maynard, Attorney General of the State, at the relation of Joseph W. Dusenbury and Will J. Dusenbury, against Oscar R. Looker, Charles A. Kent, Will S. Green, William A. Moore, Louis H. Chamberlain, William C. Colburn, Benjamin J. Conrad, John J. Mooney and Michael J. Mooney, to try the rights of the defendants and of the relators respectively to the offices of members of the board of directors of the Michigan Mutual Life Insurance Company. The right to those offices was claimed by the defendants under the original articles of association of the company under the general laws of Michigan; and by the relators under a statute subsequently enacted by the legislature of the State, which the defendants contended to be unconstitutional and void as impairing the obligation of the contract made between the State and the corporation by its original organization.

The Constitution of Michigan, adopted in 1850, art. 15, sec. 1, is as follows: "Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed." 1 Charters and Constitutions, 1008.

The general law of Michigan of March 30, 1869, entitled "An act in relation to life insurance companies transacting business within this State," contained the following provisions:

By § 1, "Any number of persons not less than thirteen may associate together and form an incorporated company for the purpose of making insurance upon the lives of individuals, and every insurance pertaining thereto, and to grant, purchase and dispose of annuities."

By § 2, "The persons so associating shall subscribe articles of association, which shall contain"—"4. The manner in which the corporate powers are to be exercised, the number of directors and other officers, and

the manner of electing the same, and how many of the directors shall constitute a quorum, and the manner of filling all vacancies." "7. Any terms and conditions of membership therein, which the corporators may have agreed upon, and which they may deem important to have set forth in such articles."

By § 5, "The articles of association shall be submitted to the attorney general for his examination, and if found by him to be in compliance with this act, he shall so certify to the secretary of state." Stat. 1889, c. 77; 1 Laws of Michigan of 1869, p. 124.

Under that statute, the Michigan Mutual Life Insurance Company was duly organized July 3, 1870, with articles of association, the fourth of which provided as follows:

"The corporate powers of the company shall be exercised by a board of directors, which shall consist of twenty-one members, which may be increased at the option of the board to not more than forty. The first meeting for the election of directors shall be called by the present officers, and held as soon as practicable after these articles shall take effect. No person shall be eligible who is not owner of at least ten shares of the guarantee capital of the company, and at least two thirds of the directors shall be residents of the State of Michigan. The board, at their first meeting, shall divide themselves by lot into three equal classes, as near as may be, whose terms of office shall expire at the end of one, two and three years respectively, and thereafter one third of the directors shall be chosen annually for the class whose term then expires, who shall hold office for three years, or until their successors are elected; but the first board of directors, whose terms shall not have expired previous to the last Tuesday in January, shall continue in office until the last Tuesday in January following. The election of directors shall be had at the annual meeting of the company, which shall be held on the last Tuesday in January at the office of the company in Detroit. They shall be chosen by ballot, and a majority of all the votes cast shall elect. Every shareholder shall be entitled to one vote for directors for every share of guarantee capital standing in his name on the books of the company and may vote in person or by proxy. And every policy-holder insured in this company for the period of his natural life in the sum of not less than five thousand dollars shall also be entitled to one vote in the annual election of directors, which vote must be given in person."

In 1885 the legislature of Michigan passed an act entitled "An act to secure the minority of stockholders, in corporations organized under general laws, the power of electing a representative membership in boards of directors," the first section of which provided as follows: "In all elections for directors of any corporation organized under any general law of

this State, other than municipal, every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him for as many persons as there may be directors to be elected; or to cumulate said shares, and give one candidate as many votes as will equal the number of directors multiplied by the number of shares of his stock; or to distribute them on the same principles among as many candidates as he shall think fit. All such corporations shall elect their directors annually, and the entire number of directors shall be balloted for at one and the same time, and not separately." Stat. 1885, c. 112; Public Acts of 1885, p. 116.

Directors were elected in accordance with the articles of association until the annual meeting of January 28, 1896, when, the whole number of directors being twenty-seven, of whom nine were elected annually, the whole number of votes for directors was 4893; the nine defendants received 3655 votes each; and Joseph W. Dusenbury, representing in his own right or by proxy 1238 shares, undertook, under the statute of 1885, to multiply the number of his shares by nine, making the number 11,142, and, dividing this number equally, cast 5571 votes for himself and 5571 for Will J. Dusenbury; and, if his claim had been allowed, they two, the relators in this case, would have been elected directors. But his claim was rejected, his vote was allowed on 1238 shares only, and the nine defendants were declared elected, and assumed and since exercised the offices of directors.

The Supreme Court of Michigan held the statute of 1885 to be constitutional and valid, and adjudged that the relators were elected directors, and should have been so declared. 111 Michigan, 498. The defendants sued out this writ of error.

[October 15, 1900.]

Mr. Justice GRAY, after stating the case, delivered the opinion of the Court.

The single question in this case is whether a power, reserved by the constitution of a State to its legislature, to alter, amend or repeal future acts of incorporation, authorizes the legislature, in order (as declared in the title of the statute of Michigan now in question) "to secure the minority of stockholders, in corporations organized under general laws, the power of electing a representative membership in boards of directors," to permit each stockholder to cumulate his votes upon any one or more candidates for directors.

By the decision in the leading case of *Dartmouth College* v. *Woodward*, 4 Wheat. 518, it was established that a charter from the State to a private corporation created a contract, within the meaning of the clause in the Constitution of the United States forbidding any State to pass any law im-

pairing the obligation of contracts; and consequently that a statute of the State of New Hampshire, increasing the number of the trustees of Dartmouth College as fixed by its charter, and providing for the appointment of a majority of the trustees by the executive government of New Hampshire, instead of by the board of trustees as the charter provided, was unconstitutional and void.

Mr. Justice Story, in his concurring opinion in that case, after declaring that in his judgment it was "perfectly clear that any act of a legislature which takes away any powers or franchises vested by its charter in a private corporation, or its corporate officers, or which restrains or controls the legitimate exercise of them, or transfers them to other persons, without its assent, is a violation of the obligations of that charter," took occasion to add: "If the legislature mean to claim such an authority, it must be reserved in the grant." 4 Wheat. 712.

After that decision, many a State of the Union, in order to secure to its legislature the exercise of a fuller parliamentary or legislative power over corporations than would otherwise exist, inserted, either in its statutes or in its constitution, a provision that charters thenceforth granted should be subject to alteration, amendment or repeal at the pleasure of the legislature. See *Greenwood* v. *Freight Co.*, 105 U. S. 13, 20, 21. The effect of such a provision, whether contained in an original act of incorporation, or in a constitution or general law subject to which a charter is accepted, is, at the least, to reserve to the legislature the power to make any alteration or amendment of a charter subject to it, which will not defeat or substantially impair the object of the grant, or any right vested under the grant, and which the legislature may deem necessary to carry into effect the purpose of the grant, or to protect the rights of the public or of the corporation, its stockholders or creditors, or to promote the due administration of its affairs. *Sherman* v. *Smith*, 1 Black, 587; *Miller* v. *State*, 15 Wall. 478; *Holyoke Co.* v. *Lyman*, 15 Wall. 500; *Sinking Fund Cases*, 99 U. S. 700, 720, 721; *Close* v. *Glenwood Cemetery*, 107 U. S. 466; *Spring Valley Waterworks* v. *Schottler*, 110 U. S. 347; *New York & New England Railroad* v. *Bristol*, 151 U. S. 556.

As illustrations of the right of the legislature, exercising such a reserved power, to alter for the future the liability of stockholders to creditors of the corporation, or the mode of computing the votes of stockholders for directors, it will be sufficient to state two of the cases just cited.

The case of *Sherman* v. *Smith*, 1 Black, 587, was as follows: The general banking act of New York of 1838, c. 260, provided, in § 15, that any number of persons might associate to establish a bank, upon the terms and conditions, and subject to the liabilities, prescribed in this act; in § 23, that no shareholder of any association formed under this act should be

individually liable for its debts, unless the articles of association signed by him should declare that the shareholder should be liable; and, in § 32, that the legislature might at any time alter or repeal this act. The articles of association of a corporation organized under this act in 1844 expressly provided that the shareholders should not be individually liable for its debts. By provisions of the constitution of New York of 1846, art. 8, sec. 2, and of the general statute of 1849, c. 226, the shareholders of all banks were made liable for debts contracted by the bank after January 1, 1850. This court unanimously held that these provisions were not unconstitutional as impairing the obligation of a contract.

The case of *Miller* v. *State*, 15 Wall. 478, was this: By the Revised Statutes of New York of 1828, c. 18, tit. 3, it was enacted that "the charter of every corporation that shall hereafter be granted by the legislature shall be subject to alteration, suspension and repeal, in the discretion of the legislature." The constitution of New York of 1846, art. 8, sec. 1, ordained as follows: "Corporations may be formed under general laws but shall not be created by special act," except in certain cases. "All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed," 2 Charters and Constitutions, 1363. In 1850 the legislature passed a general railroad act authorizing the formation of railroad corporations with thirteen directors, and providing that the subscribers to the articles of association and all who should become stockholders in the company should become a corporation, and "be subject to the provisions contained in" the aforesaid title of the Revised Statutes. Stat. 1850, c. 140, § 1. In the same year, a railroad corporation was organized under that act for the construction of a railroad from the city of Rochester to the town of Portage; and in 1851, by a statute amending the charter of the city of Rochester, that city was authorized to become a stockholder in the corporation, and to appoint four of the thirteen directors. Stat. 1851, c. 389, § 24. In 1867, the legislature passed another statute, authorizing the city to appoint seven of the thirteen directors. Stat. 1867, c. 59. This court upheld the validity of the latter statute, upon the ground that the reservation in the constitution of 1846, and in the statutes of 1828 and 1850, of the power to alter or repeal the charter, clearly authorized the legislature to augment or diminish the number, or to change the apportionment, of the directors as the ends of justice or the best interests of all concerned might require. 15 Wall. 492, 498. The full extent and effect of the decision are clearly brought out by the opinion of two justices who dissented for the very reason that the agreement with respect to the number of directors which the city should elect was not a part of the charter of the company, but was an agreement

between third parties, outside of and collateral to the charter, and which the legislature could not reserve the power to alter or repeal. 15 Wall. 499. That case cannot be distinguished in principle from the case at bar.

Remembering that the *Dartmouth College case*, (which was the cause of the general introduction into the legislation of the several States of a provision reserving the power to alter, amend or repeal acts of incorporation,) concerned the right of a legislature to make a change in the number and mode of appointment of the trustees or managers of a corporation, we cannot assent to the theory that an express reservation of the general power does not secure to the legislature the right to exercise it in this respect.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.